

1 THE HONORABLE RICHARD A. JONES  
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13 UNITED STATES DISTRICT COURT  
14 WESTERN DISTRICT OF WASHINGTON  
15 AT SEATTLE

16 BOMBARDIER INC.,  
17  
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19 Plaintiff,  
20  
21 v.  
22

23 MITSUBISHI AIRCRAFT  
24 CORPORATION, MITSUBISHI  
25 AIRCRAFT CORPORATION AMERICA,  
26 INC., et al.,  
27

28 Defendants.  
29

30  
31 2:18-cv-1543 RAJ  
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33

34 DEFENDANT MITSUBISHI AIRCRAFT  
35 CORPORATION AMERICA, INC.'S  
36 POSITION ON SCHEDULING ISSUES  
37  
38

39 The parties sought a scheduling conference to resolve five issues needed to establish a  
40 fair process to resolve Plaintiff Bombardier Inc.'s Motion for a Preliminary Injunction. (Dkt. 4).  
41 The parties recently resolved two of the five issues, and partially resolved another. The rest  
42 remain for decision by the Court. Defendant Mitsubishi Aircraft Corporation America, Inc.  
43 ("Mitsubishi Aircraft America") now respectfully provides its position on the remaining issues,  
44 pursuant to the Court's Order. (Dkt. 45).

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46 I. APPLICABLE FACTS  
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48 A. The Motion for Preliminary Injunction  
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50 51 Bombardier filed its Motion for a Preliminary Injunction ("the Motion") on October 19,  
52 2018. Bombardier originally noted the Motion for November 16, 2018, (Dkt. 4), but the Motion

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54 MITSUBISHI AIRCRAFT AMERICA'S POSITION ON  
55 SCHEDULING ISSUES (NO. 18-CV-1543 RAJ) – 1

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1 is now noted for January 4, 2019. (Dkt. 46.) Bombardier's Motion was filed almost three years  
 2 to the day from when Bombardier first raised the issues in this case—Exhibit B to Bombardier's  
 3 Complaint shows Bombardier first challenged a defendant's conduct on October 22, 2015, when  
 4 it contended that Defendant AeroTEC was allegedly hiring Bombardier employees. (Dkt. 1.)  
 5 Bombardier then filed its Motion three years later, long after any preliminary injunction could  
 6 have prevented the alleged harm. Mitsubishi Aircraft America will demonstrate that no alleged  
 7 trade secrets were misappropriated, or indeed, that it even received the alleged secrets.  
 8 Regardless, Bombardier's Motion was filed long after it could prevent the supposed harm  
 9 Bombardier alleges.

10       The Motion contends, *inter alia*, that Mitsubishi Aircraft America misappropriated  
 11 alleged trade secrets for use in certifying the Mitsubishi Regional Jet ("MRJ"). In the  
 12 accompanying Proposed Order (Dkt. 4-1), Bombardier requests, *inter alia*, that the Court enjoin  
 13 Mitsubishi Aircraft America from using eleven Bombardier documents, and any information  
 14 "derived from" those documents. Bombardier contends that the documents were  
 15 misappropriated by former-Bombardier employee Defendants Laurus Basson, Marc-Antoine  
 16 Delarche and Cindy Dornéval. None of the individuals are alleged to have ever worked for  
 17 Mitsubishi Aircraft America, and the evidence will show that the individuals did not provide the  
 18 documents to, or use the documents on behalf of, Mitsubishi Aircraft America (or any other  
 19 Defendant.) Nonetheless, Bombardier contends that the alleged trade secrets were  
 20 misappropriated by Mitsubishi Aircraft America, as well as the other Defendants.

21       **B. Bombardier Intends to File Successive Motions for Preliminary Injunctions.**

22       The pending Motion for a Preliminary Injunction seeks to enjoin two of the three  
 23 corporate Defendants: Mitsubishi Aircraft America and AeroTEC, both of whom have been  
 24 served. Until 2:02 PM today, the Motion sought to enjoin three of the five individual Defendants  
 25 from using information on the MRJ program: Mr. Basson, Ms. Dornéval and Ms. Delarche. (Dkt.  
 26 4.) Bombardier notified Defendants' counsel at that time that it would no longer seek a  
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28       **MITSUBISHI AIRCRAFT AMERICA'S POSITION ON**  
 29       **SCHEDULING ISSUES (NO. 18-CV-1543 RAJ) – 2**

preliminary injunction against individuals.<sup>1</sup> (Decl. J. Riedinger ¶ 2 Ex. A.). Bombardier has also stated in its Motion that it intends to file a second preliminary injunction motion, this time against Mitsubishi Aircraft Corporation (“MITAC”), a Japanese corporation, and Keith Ayre, a resident of Japan, after it effects service on those Defendants. (See Dkt. 4 n.1.) Bombardier’s second motion for a preliminary injunction will be based on the “same substantive grounds” as the first motion, and will seek the same injunctive relief but against MITAC and Mr. Ayre. (*Id.*) Bombardier thus intends duplicative motions on the same grounds, addressing the same documents.

### C. The Alleged Trade Secrets

Bombardier filed its Motion for a Preliminary Injunction accompanied by an extremely broad Proposed Order. (See *generally* Dkt. 4-1.) That Proposed Order sought an injunction against the use of 15 documents (*id.* at 2), but only eleven were discussed in Bombardier’s Motion (*see generally* Dkt. 4). It also proposed an injunction against use or disclosure of “any additional documents, and any information or data contained therein” that “were retained by former Bombardier employees.” (Dkt. 4-1 ¶¶ 2-3.) The Proposed Order did not identify or describe any of the “additional documents” or place any limit on which persons were “former Bombardier employees.” Mitsubishi Aircraft America has discussed the breadth of that Proposed Order for weeks with Bombardier, which is why the Stipulated Motion for a Scheduling Conference listed “Trade Secret Identification” as one of the topics for resolution. Bombardier’s email this afternoon narrowed Bombardier’s Motion to the eleven documents subject to the pending Motion to Seal. (Decl. Riedinger Ex. A.)

The eleven remaining documents consist of hundreds of pages, and Bombardier agrees that not all the information in those hundreds of pages of documents are trade secrets. (See, e.g., Dkt. 5 at 15.) Bombardier’s Motion fails to distinguish between the public information in the

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<sup>1</sup> Mr. Delarche, a resident of Japan, has not been served with the Summons and Complaint.

1 documents, and the allegedly trade secret information. Bombardier nevertheless seeks to enjoin  
 2 the Mitsubishi Aircraft America from using any information in the eleven documents, or any  
 3 information derived from those documents, regardless of whether the information is secret. (Dkt.  
 4 4-1 at 2-3.)  
 5  
 6

7 **D. Bombardier Has Known for Years of the Alleged Misappropriation**

8 Bombardier first raised the issues addressed by its Motion in 2015. It did not file suit.  
 9 Nor did it attempt to seek an injunction. The three individuals alleged to have misappropriated  
 10 the eleven documents left Bombardier in March 2016, May 2016, and February 2017. (See  
 11 Dkt. 1 at ¶¶ 60-62.) Bombardier again did not file suit, and again did not seek an injunction.  
 12 Bombardier's theory of misappropriation is summarized as (a) those three individuals  
 13 collectively emailed the eleven documents to their personal email addresses before they left  
 14 Bombardier and went to work for AeroTEC, and thereafter (b) the delay in certification of the  
 15 MRJ was somehow reduced by an unidentified use of the documents by AeroTEC and  
 16 Mitsubishi Aircraft America. Bombardier could have asserted the same theory it is now  
 17 pursuing at least by early 2017, but delayed until October 2018 to assert its Motion, and plans yet  
 18 another, nearly identical motion, sometime next year.  
 19  
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21 **II. Pending Issues**

22 Mitsubishi Aircraft America's position on the remaining issues is as follows:  
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25 **A. Multiple Preliminary Injunction Motions are Improper**

26 The pending Motion is premature. It should be decided only after all parties are served,  
 27 and Bombardier files its second motion for a preliminary injunction. Bombardier should not be  
 28 allowed to file consecutive preliminary injunction motions to obtain "the same injunctive relief"  
 29 against other Defendants (MITAC and Keith Ayre) "on the same substantive grounds. . . as that  
 30 now requested."  
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33 Successive motions for preliminary injunctions on the same grounds are not  
 34 contemplated by the rules and are inherently inefficient. Such motions waste judicial resources  
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37 **MITSUBISHI AIRCRAFT AMERICA'S POSITION ON**  
 38 **SCHEDULING ISSUES (NO. 18-CV-1543 RAJ) – 4**

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1 and improperly give a plaintiff multiple bites at the apple, thereby encouraging piecemeal  
 2 litigation. Bombardier's delay in filing its Motion also shows that there is no urgency to any  
 3 issue that warrants having the same issue decided in successive motions. The facts alleged in the  
 4 Motion have been known to Bombardier since at least early last year, the alleged  
 5 misappropriation occurred at least 22 months ago, and Bombardier had an opportunity to seek a  
 6 preliminary injunction as long as three years ago. Fundamental fairness and judicial economy  
 7 mandate that the pending Motion not be considered until after all parties have been served and  
 8 had an opportunity to address the accusations against them, especially where, as here,  
 9 Bombardier delayed for years any attempt to obtain a preliminary injunction.

10 **B. Access to Unserved Documents & Interim Confidentiality Agreement**

11 The parties have resolved this issue pursuant to the terms and conditions set forth in an  
 12 Interim Confidentiality Agreement negotiated by the parties. (Decl. Riedinger Ex. B.)

13 **C. Briefing Schedule for the Motion for Preliminary Injunction**

14 Bombardier seeks to file consecutive motions. Until Bombardier files its second motion,  
 15 the present Motion is premature, improper, and inefficient.

16 If the pending Motion nonetheless proceeds with its current noting date of January 4,  
 17 2019, the parties have agreed upon a briefing schedule, and this portion of the issue has been  
 18 resolved.

19 **D. Trade Secret Identification**

20 Bombardier's eleventh hour narrowing of the Proposed Order has resolved much of this  
 21 issue, although it does not resolve the fact that Plaintiff admits the eleven documents also  
 22 contain non-trade secret information. Plaintiffs should be required to identify the trade secrets

1 within the eleven documents for the reasons set forth in Mitsubishi Aircraft America's response  
 2 to Bombardier' Motion to Seal.<sup>2</sup>  
 3

4 **E. An Evidentiary Hearing Should be Conducted**

5 A short (at most two-day) evidentiary hearing is appropriate on Bombardier's motion.  
 6 Such hearings are appropriate when justified by "general concepts of fairness, the underlying  
 7 practice, the nature of the relief requested, and the circumstances of the particular cases." *See* 7  
 8 J. Moore, J. Lucas & K. Sinclair, *Moore's Federal Practice* ¶ 65.04[3] at 65–59 n. 12 (2d ed.  
 9 1986).

10 Bombardier's contentions are sharply contested by Defendants, especially since  
 11 Bombardier relies only on speculation to contend that its alleged trade secrets were  
 12 misappropriated by Mitsubishi Aircraft America. Bombardier assumes progress toward  
 13 certifying the MRJ has accelerated since AeroTEC and Mitsubishi Aircraft America hired former  
 14 Bombardier employees, and from that, Bombardier further assumes that the progress resulted  
 15 from misappropriation of its alleged trade secrets. (Dkt. 4 at 17-18.) Yet Bombardier has not  
 16 identified any facts showing Mitsubishi Aircraft America even received the allegedly  
 17 misappropriated documents, let alone used them.

18 Defendants seek the opportunity to refute Bombardier's speculative conclusions through  
 19 live testimony, including from the individual defendants whom Bombardier contends  
 20 misappropriated the documents. The individuals will explain that they did not provide the  
 21 documents to Mitsubishi Aircraft America (or any other defendant), and that the documents were  
 22 not used in the MRJ program. The individuals will also explain that the allegedly  
 23 misappropriated documents were used by the individuals at their homes only to perform work for  
 24 Bombardier. The Court should have the opportunity to listen to the witnesses and evaluate their  
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27 <sup>2</sup> At the time this paper was completed, Bombardier had not yet served a revised Proposed Order. If that  
 28 order does not match the assertions in Bombardier's 2:02 PM email, Mitsubishi Aircraft America will seek leave to  
 29 address any issues the new proposed order may create. (Decl. Riedinger Ex. A.)

1 credibility. Mitsubishi Aircraft America also believes the Court should hear other witnesses  
2 explain that (1) the documents at issue do not contain trade secrets and (2) the differences  
3 between the MRJ and Bombardier's aircraft prevent the alleged Bombardier trade secrets from  
4 even being useful to the Defendants' certification efforts.  
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7 Allegations of trade secret misappropriation are serious, and by themselves cause serious  
8 harm to the defendants. Live testimony is the best way for the Defendants to show the Court that  
9 the Defendants acted in good faith, and did not misappropriate the alleged secrets.  
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11

12 RESPECTFULLY SUBMITTED this 7th day of December 2018.  
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14

15 *s/ Mary Z. Gaston*  
16

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MITSUBISHI AIRCRAFT AMERICA'S POSITION ON  
SCHEDULING ISSUES (NO. 18-CV-1543 RAJ) – 7

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## **CERTIFICATE OF SERVICE**

I certify under penalty of perjury that on December 7, 2018, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system, which will send notification of such filing to the email addresses indicated on the Court's Electronic Mail Notice List.

DATED this 7th day of December 2018.

*s/Mary Z. Gaston*  
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**CERTIFICATE OF SERVICE  
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